

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

May 23, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: October 25, 2006
Case Number: TSO-0300

This decision concerns the eligibility of XXX X XXXXXXXXXX (hereinafter referred to as "the Individual") to obtain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The local Department of Energy (DOE) security office (the LSO) denied the Individual's request for an access authorization under the provisions of Part 710. This decision considers whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be restored.¹ For the reasons stated below, I find that the Individual's access authorization should be restored.

I. BACKGROUND

The present case concerns an Individual alleged to be "a user of alcohol habitually to excess." The events leading to this proceeding began when the Individual informed the LSO that he had been arrested for Driving While Intoxicated (DWI) on November 28, 2004. A personnel security interview (PSI) of the Individual was conducted. The Individual was then asked to submit to an examination by a DOE consultant psychiatrist (the DOE Psychiatrist). On April 13, 2005, the DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. DOE Psychiatrist's Report at 2. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security file and selected medical records. On April 20, 2005, the DOE Psychiatrist issued a report in which she opined that the Individual

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

habitually used alcohol to excess.²

The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated and reformed to resolve the security concerns raised by his alleged habitual use of alcohol. The DOE Psychiatrist wrote: “As adequate evidence of *rehabilitation* . . . I recommend at least following the EAP [Employee Assistance Program] recommendation of counseling until June 2005.” DOE Psychiatrist’s Report at 16 (emphasis supplied). The DOE Psychiatrist further opined that “[S]omeone who had been a habitual user of alcohol to excess is *reformed* if he drinks to moderation every time he chooses to drink.” *Id.* (emphasis supplied). DOE Psychiatrist’s Report at 18. In summary, the DOE Psychiatrist opined “I recommend that the [I]ndividual does not engage in excessive drinking and not have any alcohol-related incident for one year after the [November 28, 2004] arrest.” *Id.* (emphasis supplied).

After receipt of the DOE Psychiatrist’s Report, the LSO initiated an administrative review proceeding. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has “been, or is, a user of alcohol habitually to excess.” 10 C.F.R. § 710.8(j) (Criterion J).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the DOE Office presented one witness: the DOE Psychiatrist. The Individual presented seven witnesses: his father, his roommate (the Roommate), two co-workers with whom he socializes, two of his supervisors and his counselor (the Counselor). The Individual also testified on his own behalf.

II. STANDARD OF REVIEW

The Hearing Officer’s role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting or continuation of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual’s age and maturity at the time of the conduct; the voluntariness of the Individual’s participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion,

² The DOE Psychiatrist did not diagnose the Individual with Alcohol Abuse or Dependence or any other medical condition or disorder.

exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

In the present case, the LSO is concerned that the Individual has been drinking habitually to excess. The Notification Letter does not allege that the Individual suffers from Alcohol Abuse or Dependence. The bases for the accusation that the Individual habitually drinks to excess are set forth in the Notification Letter. The Notification Letter claims:

(1) The DOE Consultant Psychiatrist opined that the Individual is “a user of alcohol habitually to excess. . . .”³

(2) The Individual was arrested for DWI in November 2004.

(3) In April 2000, while serving in the Military, the Individual received a non-judicial punishment for “Drunk and Disorderly.” The incident which lead to this charge resulted from the Individual’s consuming such large quantities of alcohol that he lost consciousness and required medical treatment for alcohol poisoning.

I note that the issue before me, whether the Individual is a habitual user of alcohol to excess, is difficult to address. Neither the Part 710 Regulations (the Regulations) nor the DOE’s Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, set forth at Appendix B to Subpart A of 10 C.F.R. Part 710 (the Guidelines) define the terms “habitual” or “excess.” It is safe to assume that by “excess” it is meant “intoxication.” The Guidelines state: “Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.” Guideline G: Alcohol Consumption. The determination of an individual’s suitability to maintain a DOE access authorization is in essence a risk assessment. Whenever an individual with a DOE access authorization becomes intoxicated, the risk of an unauthorized disclosure exists. The more often a particular clearance holder is intoxicated, the greater the risk is of an unauthorized disclosure. While there exists no specific prohibition against a clearance holder occasionally ingesting alcohol to the point of intoxication on his own time, if a clearance holder becomes intoxicated often enough, the risk becomes too great for the DOE to allow the Individual to maintain an access authorization. Unfortunately, the Regulations and the Guidelines offer no specific guidance in determining that point at which the risk becomes too great.

In the present case, the Individual has convinced me that he has minimized his use of alcohol and

³ The Regulations do not require that a determination that a person is or has been a user of alcohol habitually to excess be supported by the opinion of a medical professional.

intends to refrain from excessive alcohol use in the future. The Individual testified that, “I’d say I could count on one hand how many times I have had one beer since the [November 28, 2004 DWI] incident.” Tr. at 86. The Individual further testified credibly that he hasn’t had more than one beer at a sitting since the DWI arrest. *Id.* at 87. The Individual testified that he intends to exercise restraint when consuming alcohol in the future. Tr. at 89.

The Individual presented the testimony of two of his supervisors who both indicated that the Individual was an excellent employee and showed no signs of an alcohol problem while at work. Tr. at 8-10, 15-17. The Individual also presented the testimony of two of his co-workers. Both co-workers testified that they maintain social contact with the Individual outside of their employment. Tr. at 20, 26-27. These co-workers vouched for the Individual’s work ethic. Tr. at 21, 27-28. The co-workers also testified that they had not observed the Individual abuse alcohol. Tr. at 21, 23-24, 27, 31-33. The Individual’s roommate also testified on the Individual’s behalf. The Roommate described the Individual as “the moral compass” of their social circle. Tr. at 37. The Roommate also testified that he had not observed the Individual abusing alcohol since the Individual’s DWI arrest. Tr. at 37-38, 46, 49. The Roommate further testified that the DWI arrest “opened [the Individual’s] eyes” to the dangers of alcohol. Tr. at 52. The Individual’s father testified that he has not had any reason to believe that his son has abused alcohol since the DWI arrest. Tr. at 57-58, 62-63.

The Individual presented the testimony of a counselor with a doctorate in educational psychology (the Counselor). The Counselor testified that he had met with the Individual on a bi-weekly basis in order to provide counseling services. Tr. at 67. The Counselor testified that the Individual does not suffer from Alcohol Abuse or Dependence. Tr. at 67, 75. The Counselor testified that the Individual had met all of the criteria for reformation and rehabilitation recommended by the DOE Psychiatrist, noting that the Individual had attended a victim’s impact panel and alcohol education classes and complied with all of the requirements of the program established for him by the Employee Assistance Program (EAP). Tr. at 67-68, 73. The Counselor also testified that the Individual had gained an understanding of the stressors in his life as well as their effect on him, and had developed constructive strategies for coping with them. Tr. at 68-69, 73. The Counselor noted that the Individual has a strong support system. Tr. at 69.

The DOE Psychiatrist testified that the Individual does not have any medically diagnosable alcohol disorder. Tr. at 98. However, she was of the opinion that the Individual used alcohol to excess on a habitual basis at the time she conducted her forensic psychiatric examination of the Individual. The DOE Psychiatrist noted that the Individual complied with the EAP’s treatment program. Tr. at 100. The DOE Psychiatrist testified that “I really think this experience has scared [the Individual] quite a bit, and he’s young, so it will be a good learning experience for him” Tr. at 103. Most importantly, the DOE psychiatrist testified that the Individual had met her treatment recommendations and is now adequately rehabilitated and reformed. Tr. at 106.⁴

⁴ The DOE Psychiatrist remained concerned about the Individual’s credibility. During her

Both the Individual's counselor and the DOE Psychiatrist agree that the Individual is reformed and rehabilitated from his excessive alcohol use. Accordingly, I am convinced that the Individual has resolved the security concerns raised by the DOE under Criterion J.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criterion J. Therefore, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the Individual's access authorization should be restored at this time. The LSO may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: May 23, 2006

examination of the Individual, he had informed her that he had sought testing for hepatitis (a liver disorder) after receiving a tattoo. DOE Exhibit 11 at 7; Tr. at 104. The DOE Psychiatrist subsequently obtained the Individual's medical records, which apparently did not indicate that the Individual had sought testing for hepatitis. However, these medical records did indicate that the Individual sought a medical evaluation because of his concern that he might have a sexually transmitted disease (STD). (The Individual was tested for many types of STDs; these tests were negative.) At the Hearing, the Individual admitted that he omitted mentioning his concerns about STDs to the DOE Psychiatrist. Tr. at 109-111. The Individual testified that he had in fact mentioned two concerns to the physician: hepatitis and STDs. The Individual indicated that he did not want DOE to know about his concern about STDs because it was highly personal and irrelevant. *Id.* While the Individual's candor in this matter did not rise to the standard expected of a DOE security clearance holder, the DOE was fully aware of the Individual's omissions when it prepared the Notification Letter but did not include any charges concerning them in the Statement of Charges. Accordingly, they are not among the issues before me in the present case.